

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 CHRISTOPHER LEE JENKINS,

11 Plaintiff,

No. CIV S-04-2520 LKK JFM P

12 vs.

13 ARNOLD SCHWARZENEGGER,

14 Defendant.

ORDER

15 \_\_\_\_\_/  
16 Plaintiff is a state prisoner proceeding pro se with a civil rights complaint  
17 pursuant to 42 U.S.C. § 1983. On April 25, 2005, this court granted plaintiff an extension of  
18 time in which to file his second amended complaint until May 31, 2005, but held the April 13,  
19 2005 findings and recommendations in abeyance pending receipt of his second amended  
20 complaint. On May 2, 2005, plaintiff filed objections to the findings and recommendations,  
21 dated April 22, 2005, which apparently crossed in the mail with this court's April 25, 2005 order.  
22 In his May 2, 2005 objections, plaintiff seeks additional time to file his second amended  
23 complaint, but states he can file his amended complaint by May 31, 2005. Since that is the new  
24 deadline set by this court's April 25, 2005 order, plaintiff will be directed to file his second  
25 amended complaint by May 31, 2005.

26 /////

1 Plaintiff also seeks permission to pursue the instant action as a class action.  
2 Plaintiff, however, is a non-lawyer proceeding without counsel. It is well established that a  
3 layperson cannot ordinarily represent the interests of a class. See McShane v. United States, 366  
4 F.2d 286 (9th Cir. 1966). This rule becomes almost absolute when, as here, the putative class  
5 representative is incarcerated and proceeding pro se. Oxendine v. Williams, 509 F.2d 1405,  
6 1407 (4th Cir. 1975). In direct terms, plaintiff cannot “fairly and adequately protect the interests  
7 of the class,” as required by Rule 23(a)(4) of the Federal Rules of Civil Procedure. See Martin v.  
8 Middendorf, 420 F. Supp. 779 (D.D.C. 1976). This action, therefore, will not be construed as a  
9 class action and instead will be construed as an individual civil suit brought by plaintiff.<sup>1</sup>

10 Accordingly, IT IS HEREBY ORDERED that plaintiff shall file his second  
11 amended complaint no later than May 31, 2005. No further extensions of time will be granted.

12 DATED: May 10, 2005.

13  
14   
15 UNITED STATES MAGISTRATE JUDGE  
16

17 /001  
jenk2520.ext2  
18  
19  
20  
21  
22  
23

---

24  
25 <sup>1</sup> Plaintiff has been attaching copies of prior court orders as well as his own prior court  
26 filings to documents filed with the court. (See February 7, 2005 Request, and May 2, 2005  
Objections.) Plaintiff is advised that the court retains copies of all courts filings, as well as court  
orders, so plaintiff is not required to attach copies of prior filings to future filings.